

# MCT CONSTITUTIONAL REFORM DRAFTING COMMITTEE

Date: 9/5/23 Time: 6 PM

Facilitator: Carol J.

Present: Marcie M., Rita E., Julie H-C, Raymond B., Clair G.

## **OLD BUSINESS:**

**Glossary**-Rita continues to take charge of pulling it together. Send glossary words and definitions to Rita. This list will only relate to the Alliance Document. Later, we will do a general glossary.

## **NEW BUSINESS:**

1. Welcome a new member of the Drafting Committee, Clair Gonzalez, who is from Leech Lake.
2. Reviewed Draft 9 of Alliance and agreed it was ready for submission to the Delegates for the 9/15/23 convention at Grand Portage.
3. Clair reported on a suggestion from Leech Lake that we use the word Doodem instead of Clan. The Alliance document wording was changed.
4. Reviewed and amended the Spokesperson, Co-Spokesperson, and the Secretary's Roles and Responsibilities.
5. Discussed the attached letter provided by Raymond on the unconstitutionality of the Selective Service system applied to Native people.
6. Expressed concerns about the 30% threshold we must meet in the SOI election. Another concern identified was the transitional period if the Alliance is adopted.
7. The committee decided to discuss the Grand Council draft next week.

**Next Meeting:** Meeting on 9/12/2023 at 6 PM

This letter relates to the constitutionality of the Selective Service System application to Native People.

To whom it may concern:

I believe that I am exempt from registering with the draft because of my status as an Anishinaabe (original people of the land.) Being Anishinaabe I owe allegiance to my own Nation first. I was born and raised in my own Nation. Even though my Nation is within the borders of the United States we are still a separate Nation with distinct borders, a language, a religion, and a culture. See Wong Kim-ARK, 169 U.S. 649 (1898). Section 1 of the Fourteenth Amendment did make Indians U.S. Citizens. 112 U.S. at 109. Section 2 of the Fourteenth Amendment confirms this conclusion. A person cannot be made a citizen by an act of Congress. There are two ways to become a citizen of the United States and they are:

1. Be born within the territory of the United States, or
2. Be naturalized

and I've been neither. Nor was I asked if I wanted to be. See also Elk v. Wilkins, 112 US at 102 (1884). See also Squire v. Capoeman, 351 U.S. 1 (1956). We are not "first-sentence" Fourteenth Amendment citizens. See also "Indians not taxed" interpretation of constitutional provisions," 57 id. 195 (1940).

The apparent intent of the Fourteenth Amendment was that representation in the lower branch of the Congress be appropriated according to the number of people who constituted the community of people of the United States. This community includes non-citizens; among whom were aliens, people bound to service, and such Indians as were bound to the laws of the United States. All were considered as entitled to be represented in the government. Indians that were sovereign and members of separate communities or tribes were outside of the community of the people of the United States even though they might be located within the geographical boundaries of a state. Their status was well-described by Chancellor Kent when in 1823 he said, "Though born within our territorial limits, the Indians are considered as born under the dominion of their tribes. They are not our subjects, born within the purview of the law, because they are not born in

obedience to us. They belong by birth to their own tribes, and these tribes are placed under our protection and dependent upon us; but still we recognize them as national communities."

In this we stood in relation to each other, at the commencement of our revolution. The American Congress made a treaty with the Six Nations in August 1775, in the name and on behalf of the united colonies and a convention of neutrality was made between them. "This is a family quarrel between us and the old England," said the agent in the name of the colonies. " You Indians are not concerned in it. We desire you to remain at home and not join in either side." Again in 1776, Congress tendered protection and friendship to the Indians and resolved that no Indian should be employed as soldiers in the armies of the United States, before the tribes to which they belonged should be in a national council have consented thereunto; nor then without the expressed appropriation of Congress. What acts of government could more strongly and clearly designate these Indians as totally detached from our bodies of politic and as separate and independent communities. Goodwin v. Jackson, 20 Johns 693, 711.

To describe these Indians who are not a part of the community of people of the United States the phrase, "Indians not taxed" was chosen. The reason for the choice of the particular phrase is easily surmised. It reflects, first, the prevalent notion that taxation is the principal criterion governmental authority. No more significant attribute to the condition of the Indian living in his separate and independent community could have been chosen. Being outside the control of either the state or federal government, he was an Indian "not taxed"; and since he did not bear the financial burden of the government he was not entitled to representation therein. United States v. Kagama, 118 U.S. 375, 378 (1886).

The framers of the Constitution of the United States clearly meant for Indians to remain separate from the community of people that made up the citizens of the United States. The chiefs as well clearly understood that we would always remain separate and not taxed. To this day we are excluded from representation in Congress. It is said we can vote in elections but it does nothing when neither party represents Indians. So it should be clear that congressional legislation could have no power to subject Indians to the draft.

The Constitution of the United States has never been amended to include Indians. When the blacks were brought into the Constitution with the Fourteenth Amendment, the phrase "Indians not taxed" was kept in. Indians are called "quasi-sovereign" which means not whole. It also means that it negates the notion of identity.

The Indian Citizenship Act of 1924, purported to declare all "Indians" citizens by legislative act, which is curious in that naturalization is a judicial act and must be performed by the courts. There are two methods by which to become a citizen of the United States, one is by birth and the other is naturalization and neither applies to "Indians" as pointed out above.

The Appropriation Act of March 5, 1871 purported to grant plenary authority over "Indians" affairs to Congress, but the 1871 Act arguably violated the separation of powers doctrine, for it eliminated a constitutionally enumerated power of the Executive by legislative act, rather than by constitutional amendment. Therefore, Congress plenary authority over "Indians" affairs it's unconstitutional in that it denies them full citizenship and absolutely excludes them from the basis of representation, which is wholly inconsistent with their being considered citizens.

Therefore the forced registration of "Indians" into the selective service system denies our human rights to self-determination and negates our identity as a separate sovereign nation. We therefore, respectfully declined to register with the draft for the above reasons.

Sincerely yours,